

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**
Meeting Date: April 16, 2019

***DISCUSSION AND CONSIDERATION OF EMERGENCY REGULATIONS FOR THE
AFFORDABLE MULTIFAMILY ENERGY EFFICIENCY FINANCING PROGRAM
UNDER THE CALIFORNIA HUB FOR ENERGY EFFICIENCY FINANCING***

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REQUEST

Staff requests approval of the Affordable Multifamily Energy Efficiency Financing Program regulations (“Regulations”) under the emergency rulemaking process. CAEATFA is statutorily authorized to issue emergency regulations, which allows for a timely launch and modifications, if needed, in early implementation of the two-year pilot program.

BACKGROUND

On behalf of the California Public Utilities Commission ("CPUC"), CAEATFA is the administrator of the California Hub for Energy Efficiency Financing ("CHEEF") and responsible for launching several energy efficiency financing pilot programs (the "Pilots"). The Pilots were authorized through CPUC Decision 13-09-044 (“D.13-09-044”) to support the state's broader energy efficiency and environmental policy goals including:

- Leveraging third party, private capital for building energy efficiency retrofits;
- Achieving energy savings;
- Reaching underserved populations, including Low-Moderate Income Homeowners, Small Businesses, and Affordable Multifamily Properties; and
- Testing whether finance as a strategy can yield more energy savings than traditional utility rebate and incentive programs.

The CHEEF is comprised of four Pilots launching sequentially:

1. Residential Energy Efficiency Loan Program (“REEL”)
2. Commercial Energy Efficiency Financing Program (“Commercial Program”)
3. Affordable Multifamily Energy Efficiency Financing Program (“Program”)
4. Non-Residential Program, including On-Bill Repayment

The first Pilot program to launch was the single family pilot, REEL. Regulations were initially approved by the Board in February 2015 and the first loan was enrolled in the Program in 2016. Responding to Staff’s requests for more flexibility with regard to program design, in March of 2017 the CPUC issued Decision 17-03-026 (“D.17-03-026”) which vests CAEATFA with broader program design and administrative authority, while requiring that all Pilots launch by the end of 2019. After D.17-03-026, CAEATFA staff (“Staff”) first turned to improve REEL and the growth is encouraging. As of March 2019, REEL has grown to include seven active lenders, 311 enrolled contractors, and has leveraged over \$6 million in private capital in residential energy efficiency retrofits. Of the 389 enrolled loans, 52% are to borrowers in low to moderate-income census tracts.

The Commercial Program is the second program to be implemented. Regulations were approved by the Board in November 2018, and the Office of Administrative Law in December 2018. Staff is currently working on the development of internal operations required for launch. Two lenders have been enrolled, and Staff is concurrently working on a soft launch this spring and developing an online user interface.

The Affordable Multifamily Energy Efficiency Financing Program (the “Program”) is the third and last of the off-bill Pilots to launch and is designed comparably to the Commercial Program structure. This Program targets the affordable multifamily property sector, and consistent with the other pilots, offers finance companies a credit enhancement in the form of a loss reserve contribution for every enrolled financing agreement. Staff has worked diligently to create a program that is easy to use, designed to attract and support a variety of finance companies offering a range of financial products that can accommodate the complexities of financing affordable multifamily housing projects, and fills a gap to facilitate deep energy efficiency projects.

The Non-Residential Program, along with On-Bill Repayment (“OBR”), is the last of the Pilots to be developed, and is intended to be on-bill with no credit enhancement. The timetable for the development of regulations for this program remains uncertain. Staff is continuing work on developing OBR, and intends to modify both the Commercial Program and Affordable Multifamily Program regulations to allow for OBR functionality.

INFRASTRUCTURE

Much of the “CHEEF Infrastructure” has already been developed for REEL and will be leveraged for both the Commercial Program and the Affordable Multifamily Program. Existing efforts related to Marketing, Education, and Outreach and integration with the state’s four Investor-Owned Utilities’ (“IOUs”) energy efficiency programs will help with deal flow. Likewise, the Trustee bank, US Bank, and the Contractor Manager, Frontier Energy, Inc., will expand their work into these two programs. Unlike REEL and the Commercial Program, it is anticipated that the Affordable Multifamily Program will enroll a small volume of financing agreements and Staff will be hands-on in ushering projects through enrollment.

PROGRAM DEVELOPMENT TIMELINE

Staff has consulted with the IOUs, implementers and staff of State administered programs (Low-Income Weatherization Program and Solar on Multifamily Affordable Housing), implementers of IOU rebate and incentive programs, and the CPUC in the development of the Affordable Multifamily Program, as well as incorporating lessons learned from implementing REEL and developing the Commercial Program. Most of the Program definitions, finance entity enrollment requirements, financing products, reporting requirements, eligible measures and projects, and disclosures are the same as the Commercial Program; therefore, much of the regulation text for both programs are substantively similar.

Staff has received public comments and input on the Affordable Multifamily Program structure and design from over 50 industry stakeholders after holding two public workshops, and participating in multiple industry conferences. Staff has analyzed and considered all comments and incorporated changes to the Affordable Multifamily Program design as appropriate. These

proposed emergency Regulations balance stakeholders’ comments with the statutory, legal, and Program administration framework as well as the CPUC’s policy intent for the Program.

2017	Limited staff and consultant resources dedicated to Affordable Multifamily Program research and design.
November 7, 2017	A public workshop held seeking input into the proposed Program structure.
Early 2018	Additional research and design with significant stakeholder outreach on Program features.
Late 2018	Staff revised program structure that was proposed at 3 affordable multifamily housing industry conferences and 2 industry convenings.
February 26, 2019	Staff holds a public workshop on proposed Affordable Multifamily Program regulations.
February 26 –March 15, 2019	Staff makes modifications to Affordable Multifamily Program regulations based on public comment.
April 16, 2019	Board Meeting to consider adoption of proposed regulations.

AFFORDABLE MULTIFAMILY PROGRAM DESIGN

Key Design Principles:

1. *The Program must be streamlined and easy to use.*

Over years of conversations that Staff has held with stakeholders one dominant theme emerged: keep the program simple. Energy efficiency program implementers constantly struggle with the balance between ensuring that projects are likely to result in energy savings while not hampering participation with complex requirements, paperwork, and reporting. Many of the policy decisions related to the Program design are related to striving for this balance. In general, Staff believes that the Pilots offer an opportunity to innovate and test novel approaches to energy efficiency financing. In order to have a meaningful evaluation of the Program, we must generate significant uptake amongst lenders and customers. Generating widespread uptake is the motivation behind decisions such as allowing a customer to finance measures at-code and not requiring rigorous reporting of baseline conditions that can deter customer uptake and private market activity. Instead, Staff has established Program requirements based on reasonable assumptions that retrofits will produce energy savings for the broader portfolio.

2. *The Program should integrate with IOU, Regional Energy Network (“REN”), Community Choice Aggregator (“CCA”), and state energy efficiency, demand response, or distributed generation programs (collectively “Program Partners”), but must also meaningfully test a non-rebate pathway to savings.*

One of the main goals of the Pilots is to determine whether financing alone, without traditional rebates or incentives, will yield energy savings. Staff believes that to meaningfully test this goal, the

financing programs should not subject customers to the same rigorous requirements of the IOU/REN/CCA and state administered rebate and incentive programs. Rebate and incentive programs give cash to IOU/REN/CCA customers for energy efficiency improvements that go beyond what are legally required and subject those projects to quality control review processes to ensure savings. The financing Program, in contrast, provides customers with access to attractive loans, leases, or service agreements – which they must repay with interest. The credit enhancement is a revolving fund, with funds recaptured by the Program when a financing is repaid. Because the Program is not distributing cash to customers, and Program funds are recaptured, the Pilots have more flexibility in how measures qualify as energy efficient than a traditional IOU program. To that end, along with integrating and allowing energy savings measures identified by Program Partners, the Program provides an extensive Energy Saving Measure List (“ESM List”) of pre-approved measures.

3. *The Program must work with the complicated financing structure of affordable multifamily properties and the affordable multifamily energy efficiency market.*

Affordable multifamily properties have complicated financing structures with multiple lienholders and tax equity investors making it very challenging to assume additional debt. In response, the Program allows savings-based payment agreements that base the payment amount on energy savings. With savings-based payment agreements, the payment amount must be less than the amount saved by the customer, making the project cash flow positive. Further, the Program does not allow a lender to use the property as security for the financing agreement, except for a UCC-1.

Similarly, financing for affordable multifamily projects is much more complex than single family residential projects. Affordable multifamily financing can involve numerous entities performing different industry roles such as lead generation, origination, servicing, and investing. Affordable multifamily financing also incorporates a variety of product offerings, in addition to savings-based payment agreements, such as loans, leases, and service agreements. In designing the Program, Staff had to account for the variances in business models of expected key participants (finance companies and property owners) and make the Program flexible enough to allow their participation.

4. *The Program is designed to fill a need that is not currently being filled.*

The Program is designed to fill gaps in project financing or finance projects in their entirety. For example, if an affordable multifamily property owner utilizes the state administered Low-Income Weatherization Program (“LIWP”), a Program Partner, to fund a portion of energy savings measures on a project, this Program, which integrates with LIWP, can be an option to finance the remaining energy savings measures of the project. Another state administered program, Solar on Multifamily Affordable Housing (“SOMAH”), provides energy audits prior to installing solar though does not provide any funding for the installation of energy savings measures. This Program can be an option to finance the energy savings measures identified in that energy audit.

Staff recognizes that a few financing options exist for affordable multifamily property owners engaged in energy efficiency retrofits. The IOUs offer On-Bill Financing (“OBF”) which is a zero interest revolving loan program. Customers in the San Francisco Bay Area have access to the Bay Area Multifamily Capital Advance Program (BAMCAP) which covers 50% of the project cost with 0% financing and a participating lender finances the remaining 50% at the participating lender’s specified interest rate. Yet there is still a large, untapped market for affordable multifamily property

energy efficiency financing and opportunities for the Program to “complement” these other offerings. The design of the Program reflects the “niches” that it can serve. For example, IOU OBF for affordable multifamily properties limits the financing amount and restricts energy saving measure installation to common areas only, and in turn, the Program does not limit the financing amount and allows energy saving measure installation in tenant occupied spaces as well as common areas.

5. The Program is designed to remove barriers for customers.

Staff recognizes that many affordable multifamily property owners have limited resources. They may not have the time to research and stay abreast of energy efficiency rebate and incentive programs. They may also have limited financing options. Many do not have the cash reserves to make the investment in energy efficiency retrofits.

The Program is designed to address some of these barriers, such as to integrate easily with existing Program Partner offerings where there is ongoing and continued outreach to affordable multifamily property owners. Further, Staff will assist affordable multifamily property owners through the Program financing process. As mentioned earlier, the Program offers financing options that do not require any upfront customer investment and that present “cash-flow positive” solutions.

SPECIFIC PROGRAM FEATURES:

Financing Customers and Properties (§ 10093.1(n) & § 10093.1(r))

Eligible Affordable Multifamily Customers and Properties

In order to qualify as a customer in the Program, an entity or individual must own and not reside at the property and must not have filed for bankruptcy within the last five years or have any outstanding judgments or liens. In order to qualify as an eligible property in the Program, there are four requirements: 1) the property must receive gas and/or electric from an IOU, CCA, or Electric Service Provider(s) (“ESPs”); 2) have 5 or more units; 3) have at least 5 years remaining on a recorded affordability deed restriction or covenant; and 4) restrict occupancy for at least 50% of the total units to households meeting the requirements of the income limits no greater than “moderate”, published annually in the California State Income Limits by the California Department of Housing & Community Development. This criteria is in alignment with other affordable multifamily programs offered by IOU/REN/CCA and the state. In addition, feedback received during the workshops and outreach to stakeholders indicated that these criteria are appropriate for affordable multifamily properties.

Underwriting Criteria

With underwriting guidelines, Staff is striking a balance between several Program goals, namely, creating a nimble Program that complements a finance company’s existing processes and applying reasonable ratepayer and consumer protections. Program underwriting criteria are a minimum and Staff allows a finance entity to apply their own, more stringent, criteria.

Finance Entities (§ 10093.2 and 10093.3)

Similar to the Commercial Program, the affordable multifamily financing market demands a participation structure that supports a wider variety of business models than in the residential space. Within the affordable multifamily market, finance entities range from traditional lenders to specialty

leasing companies to organizations that both finance and perform project installations. The affordable multifamily value chain includes deal sourcing, origination, underwriting, funding, and servicing – which can be performed by a single entity or several companies collaborating.

To accommodate the variety of affordable multifamily financing models among entities that have shown interest in the Program, we propose to allow two different finance companies to apply for enrollment together as a primary and affiliate applicant. Together the two entities fulfill Program roles such as underwriting, origination, data submission, servicing, and monthly reporting. Further, the Program allows for a separate, third, entity to be designated as a marketing representative that accommodates companies that offer financing through an ESCO or another partner.

Staff appreciates the product innovation and flexibility that non-regulated finance companies (i.e. non-banks, non-credit unions, and non-CDFIs) can bring to the Program, however, we are mindful about ensuring that these entities have the competence and capacity to fulfill their obligations for the financing's term. To that end, the Program has additional requirements for these non-regulated entities including, but not limited to, demonstrated experience and capacity to fulfill all Program roles and requirements and a minimum net worth of \$1 million. If they are originating financing agreements, non-regulated finance entities must demonstrate having originated either 20 transactions or \$20 million worth of transactions or a minimum of \$20 million in committed capital.

Financial Products (§ 10093.4)

Staff has spent a great amount of time working with finance entities and ESCO companies in order to gain an understanding of the emerging energy efficiency financing market and the needs of affordable multifamily property owners. The Program is accommodating of these needs by allowing a variety of financial product offerings. Product offerings include traditional financing products such as loans, leases, and efficiency finance agreements. Additionally, the Program is allowing newer product types to include service agreements and savings-based payment agreements. Staff takes steps in the Regulations through the definitions of “Total Financed Amount” and “Total Charge-Off Amount” to try to achieve parity between products when it comes to applying the credit enhancement and covering any claims.

Below, each financing agreement type, with the exception of traditional loans, is described:

Leases and Efficiency Financing Agreements

This is an agreement that provides the customer with Energy Savings Measures (“ESMs”) in exchange for payments in amounts that are due according to a schedule established in the agreement. The payments must result in full satisfaction of the obligation. Title to the equipment may transfer at the beginning or end of the term.

Service Agreements

This is an agreement that provides the customer with the use of ESMs as well as ongoing service and maintenance of that equipment in exchange for regular payments. Title to the ESMs does not transfer to the customer. With a service agreement, the customer is paying for ongoing service and maintenance of the measures but not the measures themselves. The Program requires that there must be a guarantee of functionality of measures or a guarantee of savings with these agreements. This is one of a couple of provisions in the Regulations that helps ensure that the credit enhancement will mitigate the *credit risk* of the borrower, not the *performance risk* related to the installed equipment.

Savings-Based Payment Agreements

A Savings-Based Payment Agreement is a type of service agreement in which the customer shares the energy efficiency savings and is ensured to pay lower energy costs than before the retrofit. Because there is an assurance of lower energy bills, the project is “cash-flow positive” to the customer. Here, the customer does not bear the risk if savings are not realized – the risk is borne by the finance entity, or in some deal structures, the contractor. Assurance of positive cash flow can come from either a guarantee or a payment structure that is based on actual energy savings. Similar to the Service Agreement, this helps ensure that the credit enhancement is not mitigating the *performance risk* of the installed equipment. Staff believes this financing agreement will be attractive to businesses and is exactly the type of innovative product that should be included in the Pilots.

Financial Product Requirements

In order to provide flexibility to the private market and benefit a diverse number of businesses, the Program does not impose requirements on term lengths or mandate minimum interest rates. However, each finance company must disclose on their Program application how the credit enhancement will provide a more favorable financial product and deeper benefits to the customers than their regular product offerings. There is no maximum financed amount, though only the first \$1 million is “Claim-Eligible” in the event of default and will receive the credit enhancement. Staff also has included several consumer protections: first, fees must be reasonable and in line with industry standards; and second, the finance entity is required to disclose to the customer either a) the annual percentage rate applied to the product, inclusive of any fees and advanced payments or b) the total cost of the project including the amount of the monthly payments plus any fees.

Eligible Projects (§ 10093.5)

Project Requirements

To be eligible for the Program, projects must be installed by contractors who have the requisite licenses for the type of installation. However, self-installation is permitted in instances where measures can be legally and safely installed without a contractor’s license and measure performance is unlikely to be affected by a non-professional installation.

A consistent message Staff received from the energy efficiency industry is that the Program must be simple in order to be successful and that the method by which measures qualify as energy saving must be quick and streamlined. A recurring complaint about other energy efficiency programs involves the complexity of the qualification process and the time it takes for measures to be approved. Staff agrees that simplicity is key to Program success and uptake and has designed two methods by which a measure can qualify as an ESM. Each method is discussed below. Projects may incorporate non Energy-Savings Measures to allow for customers that wish to include, for example, water-saving measures or painting as part of their efficiency upgrade. However, as noted earlier, 70% of the amount of financing that receives the credit enhancement must go toward ESMs. Finance companies are permitted to offer financing for solar or other forms of Distributed Generation (“DG”) or storage as part of the Program, but funds used toward DG or storage will not receive a credit enhancement.

ESM List/Pre-approved Method

The ESM List includes those measures that Staff, in consultation with industry participants and its

hired technical consultants, have determined will result in reduced energy consumption when installed in the vast majority of buildings. All measures on the ESM List are pre-approved as ESMs and are eligible for financing under the Program. The measures fall within several broad categories including: Appliances, Building Envelope, Data Centers, Food Service, HVAC, Industrial, Lighting, Pools, Refrigeration, and Water Heating. Select Demand Response measures are included where they are likely to save energy. Based on input from industry participants calling Staff's attention to new technologies, numerous new measures have been added to the ESM List, many added after the Commercial workshop in October 2018.

Staff understands that the cost to have certain measures installed by a licensed contractor could be a barrier for business owners. Staff has identified certain measures on the ESM List that are suitable for self-installation. Permitting self-installation of measures lowers the cost of an energy efficiency upgrade by removing a contractor's fees. Again, the measures approved for self-installation are those which can be legally and safely installed without a contractor's license and whose performance is unlikely to be affected by non-professional installation. In order to safeguard ratepayer funds and ensure that ESMs were installed, self-install customers are required to certify to CAEATFA that the measures were installed according to Program requirements.

Program Partner Method

Any measure or combination of measures deemed to save energy through an IOU, Regional Energy Network ("REN"), Community Choice Aggregator ("CCA") or State administered multifamily property energy efficiency, demand response, or distributed generated program qualify as an ESM under the Program. These measures have already undergone a rigorous vetting process by the IOU, REN, CCA, or state program implementers to ensure energy savings and CAEATFA will accept the outcome of that vetting process. The customer is required to provide CAEATFA with the IOU, REN, CCA or state program energy audit and reservation letter in order to verify that the measures were approved by a Program Partner.

Post-Project Verification (QA/QC)

Similar to REEL and the Commercial Program, projects will be subject to post-project verification. The Program will rely on three types of verification: desktop, photo, and field. Desktop verifications will involve a review of project data and documentation, confirmation that reported IOU rebates were sought and received, confirmation that fuel type provided by the IOU matches expected savings, and a check of contractor invoices against what was reported to the Program. A photo verification involves all reviews within the desktop verification plus a photographic review of installations and product types. A field verification includes all reviews contained in a photo verification plus an on-site review of equipment type, quantity, and installation. Post-project verifications are meant to deter contractor fraud and confirm the accuracy of reported information. In addition, the Program is requiring copies of all approved permits that were required to install any aspect of a project that is credit enhancement eligible. This will ensure that a relevant government agency has approved the installation as safe.

Credit Enhancement (§ 10093.7)

The purpose of the credit enhancement is to mitigate a degree of risk for finance companies such that they are able to offer financing that they otherwise would not be able to offer. Finance companies applying to the Program must disclose how the ratepayer-funded loss reserve contribution will be utilized to provide a benefit to the finance company's customers. The types of benefits CAEATFA is

expecting include broadened approval criteria, longer terms, lower rates, larger amounts available to finance, or other advantageous terms.

Loss Reserve Accounts

Similar to REEL and the Commercial Program, the credit enhancement for the Program is in the form of a loss reserve contribution to a loss reserve account established for the benefit of the finance entity and administered by a trustee who acts at the direction of CAEATFA.

The Program allows up to \$1 million of an enrolled financing agreement to be eligible for the credit enhancement and to be considered “claim-eligible” in the case of a default and charge-off. 70% of the claim-eligible financed amount must comprise energy saving measures and those costs that are legally and practically required for the energy saving measure’s installation. Staff understands that a customer is more likely to install energy efficiency improvements while they undertake additional, non-energy related, improvements at the same time. With that understanding, in accordance with D.13-09-044, the Program allows up to 30% of the claim-eligible financed amount to encompass these non-energy efficiency improvements. In the event that a customer defaults on a financing agreement, the finance entity is able to recover up to 90% of the outstanding claim-eligible financed amount.

Contribution Rates

The loss reserve contribution rate is structured to encourage financing to affordable multifamily properties, where without the credit enhancement or other risk mitigation to the finance entity, the project would not be financed. CAEATFA will contribute 15% up to the first \$1 million of the claim-eligible financed amount to the finance entity’s loss reserve account. Finance entities will build their loss reserve account by financing projects.

Rebalance of Funds

D.13-09-044 requires CAEATFA to recapture funds periodically. The Regulations describe an annual rebalance in which CAEATFA will recapture funds from a finance entity’s loss reserve account for all financings that have been repaid-in-full during the prior fiscal year. CAEATFA will net out any claims that were paid during the year prior to the recapture.

Claims (§ 10093.8)

As stated earlier, if a customer defaults on an enrolled financing agreement, a finance entity can file a claim with CAEATFA to recover up to 90% of the outstanding claim-eligible financed amount. Staff wants to ensure that finance companies have “skin in the game” on any financing issued. Financings are claim-eligible for 10 years from the date the financing agreement is enrolled in the Program.

Staff expects finance entities to take reasonable steps, in line with industry standards, to recover or collect on defaulted finance agreements through liquidation of collateral or collecting personal guarantees, if applicable. Claim payments will be made to finance entities net of any collection or recovery amount such that a finance entity will not be made more than 100% whole. If after CAEATFA pays a claim, the finance entity recovers or collects funds on a defaulted financing, the finance entity is required to repay CAEATFA those funds in excess of the outstanding claim-eligible amount.

REGULATORY PROCESS

Emergency Rulemaking Process

Upon Board approval of the proposed emergency regulations, the formal emergency rulemaking process will begin. Staff will post the notice of emergency rulemaking, a finding of emergency, and the text of emergency regulations to the CAEATFA website. Staff will also provide these documents to all interested parties through the e-mail listserv. Upon submittal of the regulation package to the Office of Administrative Law (“OAL”), the emergency regulations will be subject to a five-day public comment period. Staff will have until day eight to respond to any public comments submitted and OAL must make a final decision on the tenth day following submission. If on the tenth day OAL approves the emergency regulations, they will be filed with the Secretary of State and become effective upon the filing date. The emergency regulations will be valid for 180 days, during which time Staff will begin the regular rulemaking process. These emergency regulations can also be extended for two 90-day periods.

Regular Rulemaking Process

The process for approval of regular regulations will commence by publishing a copy of the regulations in the California Regulatory Notice Register (the “Register”). This starts a 45-calendar day public comment period. After that time, Staff will review and respond to any comments and present the final form of the regular regulations to the Board for approval. If there are substantial modifications, revised regulations must be published in the Register again for a 15-calendar day public comment period before Board approval. After approval, a regular rulemaking file is submitted to OAL, and OAL has 30 business days to review the regular regulations for compliance with the Administrative Procedures Act and CAEATFA’s statute. Once OAL approves the regular regulations, they are filed with the Secretary of State and become effective 30 calendar days later.

Any re-adoptions of the emergency regulations, and the undertaking of the regular rulemaking process, will likely include modifications to incorporate lessons learned from early Program implementation.

TENTATIVE TIMELINE

The timeline below provides estimates for the proposed development and implementation of the Affordable Multifamily Energy Efficiency Financing Program. All of the dates are tentative and subject to change.

April 16, 2019	CAEATFA Board considers and approves emergency regulations
April 29, 2019	Emergency regulations are submitted to OAL after approval by the Board and notice by the Authority
May 10, 2019	OAL decision deadline, emergency regulations in effect for 180 days
Mid May 2019	Staff begins finance company outreach

June 2019	First finance company enrolled in the Program
Autumn 2019	Begin regular rulemaking process.
November 13, 2019	End of 180 Days for emergency regulations ¹

RECOMMENDATION

Staff recommends adoption of a resolution to approve the proposed emergency regulations establishing the Affordable Multifamily Energy Efficiency Financing Program and authorize Staff to undertake emergency and regular rulemaking proceedings and other actions related to promulgation of the regulations.

Attachment: Proposed Text of Emergency Regulations

¹ At the end of the initial 180-day period in which the emergency regulations will be effective, CAEATFA may execute up to two additional 90-day extensions for the emergency regulations. Prior to the end of this term, CAEATFA will begin the permanent rulemaking process.

RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES, TO IMPLEMENT THE AFFORDABLE MULTIFAMILY ENERGY EFFICIENCY FINANCING PROGRAM

April 16, 2019

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009 to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that, under its Memorandum of Agreement with the California Public Utilities Commission and its contract with the investor-owned utilities to serve as the manager of the California Hub for Energy Efficiency Financing, it is necessary to adopt regulations to implement the Affordable Multifamily Energy Efficiency Financing Program (the Program).

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair and Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as emergency regulations in the form currently on file with the Authority.

Section 2. The Chair and Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting emergency and regular regulations to the Office of Administrative Law.

Section 3. The Chair and Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.

CALIFORNIA CODE OF REGULATIONS
Title 4. Business Regulations
Division 13. California Alternative Energy and Advanced Transportation Financing Authority

CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED
TRANSPORTATION FINANCING AUTHORITY
REGULATIONS IMPLEMENTING
THE AFFORDABLE MULTIFAMILY ENERGY EFFICIENCY FINANCING PROGRAM

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Section 10093.1 Definitions

- (a) “Ancillary Elements”: Project components that fall outside a Scope of Work. These components may include:
 - (1) Distributed Generation; and/or
 - (2) Capitalized Interest.

- (b) “Authority”: California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code.

- (c) “Bill Impact Estimate” (BIE): An estimate of the anticipated energy cost savings that are expected to result from the installation of Energy Saving Measures, which is provided to the Eligible Affordable Multifamily Financing Customer prior to work being performed on the Eligible Property(ies).

- (d) “Capitalized Interest”: Accrued interest from a previous finance agreement for a Project (such as a construction loan or down payment loan) where the interest has been added to the Total Financed Amount of an Eligible Financing Agreement.

- (e) “CHEEF Financing Identifier” or “CHEEF Financing ID”: An identification number associated with an Enrolled Financing Agreement created by the Authority and provided to the Finance Provider Entity at the time the financing is approved for enrollment in the Program.

- (f) “Claim-Eligible Charge-Off Amount”: The Total Charge-Off Amount multiplied by the Claim-Eligible Ratio.

- (g) “Claim-Eligible Financed Amount”: The portion of the Total Financed Amount that is eligible for reimbursement in the event of a charge-off. Non-Energy Components are limited to 30% of the dollar value of the total Claim-Eligible Financed Amount. The Claim-Eligible Financed Amount is equal to the Total Financed Amount less any:
 - (1) Distributed Generation; and
 - (2) Non-Energy Components beyond the allowable 30%.

The Claim-Eligible Financed Amount is limited to \$1 million.

- (h) “Claim-Eligible Ratio”: The ratio of the original Claim-Eligible Financed Amount to the original Total Financed Amount.

- (i) “Commission” or “CPUC”: The California Public Utilities Commission established pursuant to Article XII of the California Constitution.

- (j) “Community Choice Aggregator” (CCA): A Community Choice Aggregator as defined in Section 331.1 of the California Public Utilities Code.

- (k) “CSLB”: The California Contractors State License Board established pursuant to Article 1 (commencing with Section 7000) of Chapter 9 of Division 3 of the Business and Professions Code.

- (l) “Demand Response” (DR): Reductions, increases, or shifts in electricity consumption by customers in response to either economic or reliability signals. Economic signals come in the form of electricity prices or financial incentives, whereas reliability signals appear as alerts when the electric grid is under stress and vulnerable to high prices. Demand Response programs aim to respond to these signals and maximize ratepayer benefit.
- (m) “Distributed Generation” (DG): Technologies that generate or store energy at or near the site where it will be used. Distributed Generation may serve a single structure or it may be part of a microgrid. Technologies classified as Distributed Generation systems include, but are not limited to: solar photovoltaic, solar thermal, wind power, hydropower, biomass, fuel cells, combined heat and power, and battery storage.
- (n) “Eligible Affordable Multifamily Financing Customer”: An entity or individual who enters into an Eligible Financing Agreement with a Finance Provider Entity for the purpose of completing a Project. The entity or individual must own and not reside at the Eligible Property and must not have filed for bankruptcy within the last five years or have any outstanding judgments or liens.
- (o) “Eligible Financing Agreement”: An agreement made between a Finance Provider Entity and an Eligible Affordable Multifamily Financing Customer to finance a Project. The agreement must be for improvements to an existing building and may not be for the construction or purchase of a building.

The agreement must meet the definition of either an Eligible Lease or Eligible Equipment Financing Agreement, Eligible Loan, Eligible Service Agreement, or Eligible Savings-Based Payment Agreement. The Eligible Financing Agreement must meet the requirements specified in Section 10093.4(b).

- (p) “Eligible Lease” or “Eligible Equipment Financing Agreement”: An agreement that provides the Eligible Affordable Multifamily Financing Customer with Energy Saving Measures in exchange for payments in amounts that are due according to a schedule established in the agreement. The payments must result in full satisfaction of the obligation. Such payments are made to the Finance Provider Entity or its assignee for a specified term. Title to the equipment may transfer at the beginning or end of the term.
- (q) “Eligible Loan”: An agreement that provides the Eligible Affordable Multifamily Financing Customer with ownership of Energy Saving Measures in exchange for payments in amounts that are due according to a schedule established in the agreement. Such payments must result in full satisfaction of the obligation. Such payments are made to the Finance Provider Entity or its assignee for a specified term.

Eligible Loans must be closed end loans; no revolving lines of credit will qualify.

- (r) “Eligible Property”: A multifamily property that is:
 - (1) Supplied with gas and/or electric service by one or more Investor-Owned Utility(ies), Electric Service Provider(s) (ESPs) as described in California Public Utilities Code Section 394(a), or Community Choice Aggregator(s);
 - (2) Five or more units;

- (3) Subject to a recorded affordability deed restriction or covenant, with at least 5 years remaining on the recorded affordability deed restriction or covenant, such that the property owner is required to keep rents affordable; and
 - (4) Restrict occupancy for at least 50% of the total units to households meeting the requirements of the income limits no greater than “moderate”, published annually in the California State Income Limits by the California Department of Housing & Community Development 25 CCR § 6932.
- (s) “Eligible Savings-Based Payment Agreement”: An agreement that provides the Eligible Affordable Multifamily Financing Customer with Energy Saving Measures in exchange for regular payments to the Finance Provider Entity or the Finance Provider Entity’s assignee. The term may be specified by a number of months or may run until payments have reached a specified amount.

The agreement must satisfy each of the following criteria:

- (1) Savings will be measured and verified no less than annually;
 - (2) Total monthly energy and efficiency charges for the Eligible Affordable Multifamily Financing Customer must be projected to be "cash flow positive," based on industry-accepted estimates, meaning: allowing for seasonal variations, the combined monthly energy expense (gas and electric) along with all projected monthly Eligible Savings-Based Payment Agreement charges is projected to be less than the Eligible Affordable Multifamily Financing Customer's pre-project monthly energy expense;
 - (3) The Eligible Affordable Multifamily Financing Customer will share in benefits if actual savings exceed projected savings; and
 - (4) The Eligible Affordable Multifamily Financing Customer does not bear risk in the event that savings are less than projected.
- (t) “Eligible Service Agreement”: An agreement that provides the Eligible Affordable Multifamily Financing Customer with the use of Energy Saving Measures as well as ongoing service and maintenance of that equipment in exchange for regular payments to the Finance Provider Entity or the Finance Provider Entity’s assignee for a specified term. Title does not transfer to the Affordable Multifamily Financing Customer during the term of the agreement.

The agreement must include either:

- (1) A guarantee of functionality for any Energy Saving Measures and Non-ESMs; or
 - (2) A guarantee of energy savings. Equipment functionality or energy savings must be measured no less than annually.
- (u) “Energy Efficiency” (EE): An energy using appliance, equipment, control system, or practice for which the installation or implementation results in reduced grid-supplied energy use while maintaining a comparable or higher level of energy service as perceived by the customer.
- (v) “Energy Saving Measure” (ESM): Any Energy Efficiency or Demand Response measure, as defined, including alterations and improvements that are legally or practically required to complete the installation of the Energy Saving Measure. This includes energy audits that meet the Authority's requirements as specified on the Energy Saving Measure List. An ESM must utilize or conserve a fuel provided by an IOU/CCA/ESP at the Eligible Property.

- (w) “Energy Saving Measure Identifier” or “ESM ID”: A unique identifier assigned by the Authority to each measure contained within the ESM List.
- (x) “Energy Saving Measure List” or “ESM List”: The list of pre-qualified Energy Saving Measures, with corresponding requirements, fuel-savings type designations, and Self-Installer eligibility, published by the Authority in 4 CCR §10092.14, with the exception of the measure named “IOU/REN/CCA Rebate – Other” listed in the publication.
- (y) “Energy Service Provider” (ESP): An Energy Service Provider as defined in Section 218.3 of the California Public Utilities Code.
- (z) “Enrolled Financing Agreement”: An Eligible Financing Agreement approved for enrollment in the Program pursuant to Section 10093.6(b).
- (aa) “Enrollment Date”: The date that the Trustee has funded the Finance Provider Entity's Loss Reserve Account for the Enrolled Financing Agreement.
- (bb) “Executive Director” (ED): The Executive Director of the Authority or its designee.
- (cc) “Finance Provider Applicant” (FPA): The Primary Finance Provider Applicant and Affiliate Finance Provider Applicant, if any, collectively.
 - (1) “Affiliate Finance Provider Applicant”: As described in Section 10093.2(a)(2).
 - (2) “Primary Finance Provider Applicant”: As described in Section 10093.2(a)(1).
- (dd) “Finance Provider Entity” (FPE): The Primary Finance Provider Entity and the Affiliate Finance Provider Entity, if any, collectively.
 - (1) “Affiliate Finance Provider Entity”: The Affiliate Finance Provider Applicant approved for participation in the Program along with a Primary Finance Provider Entity as specified in Section 10093.2(a).
 - (2) “Primary Finance Provider Entity”: Primary Finance Provider Applicant approved for participation in the Program. It may be approved along with an Affiliate Finance Provider Entity as specified in Section 10093.2(a).
- (ee) “Financial Institution”: Any insured depository institution, insured credit union, or Community Development Financial Institution (CDFI), as those terms are each defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702), or a Financial Development Corporation as the term "Corporation" is defined in California Corporations Code §14003(f).
- (ff) “Investor-Owned Utility” (IOU): Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, or Southern California Gas Company, collectively referred to as “IOUs”.
- (gg) “IOU Custom”: A program offered by the IOUs, RENs, or CCAs in which measures require pre-approval, and incentives are based on unique project characteristics.

- (hh) “IOU Deemed”: A program offered by the IOUs, RENs, or CCAs in which eligible measures and rebate amounts are pre-determined. For the purpose of this definition, IOU Deemed includes the following prescriptive program types: downstream, midstream, upstream, and direct install.
- (ii) “Loss Reserve Account”: An account established and maintained by the Trustee at the Authority’s direction to hold the Loss Reserve Contribution for Enrolled Financing Agreements for the benefit of a Finance Provider Entity.
- (jj) “Loss Reserve Account Representative”: As described in Section 10093.2(b)(6).
- (kk) “Loss Reserve Contribution”: The credit enhancement contributed to the Loss Reserve Account for each Enrolled Financing Agreement in the Program pursuant to Section 10093.7(c).
- (ll) “Marketing Representative”: As described in Section 10093.2(b)(7).
- (mm) “Non-Energy Components”: All Non-ESMs, Capitalized Interest, as well as any fees for services from a Program Partner on a single Project.
- (nn) “Non-ESMs”: Any equipment, alteration, or improvement that does not fall under the definition of an Energy Saving Measure. Non-ESMs include measures that would otherwise be considered an ESM but do not utilize or conserve fuel provided by an IOU/CCA/ESP. Measures included on the ESM List may not be considered a Non-ESM. Non-ESMs do not include Distributed Generation.
- (oo) “Program”: The Affordably Multifamily Energy Efficiency Financing Program described in the regulations within this Article.
- (pp) “Program Holding Account”: The account established and maintained by the Trustee at the Authority’s direction to hold funds allocated by the IOUs for the Program.
- (qq) “Program Identifier” or “Program ID”: A number assigned by the Authority or its agent(s) that represents a program administered by the Authority.
- (rr) “Program Partner”: An entity that administers and/or implements a State of California or IOU/REN/CCA multifamily property Energy Efficiency, Demand Response, or Distributed Generation program.
- (ss) “Project”: One or more Scopes of Work as well as any Ancillary Elements at one or more Eligible Properties, financed in whole or in part under a single Eligible Financing Agreement.
- (tt) “Regional Energy Network” (REN): Regional Energy Network granted authorization by the California Public Utilities Commission under Decision 12-05-015 and later defined in Decision 12-11-015.
- (uu) “Scope of Work”: The Energy Saving Measures and/or Non-ESMs installed by a contractor or Self-Installer as reported to the Authority and part of a Project.

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- (vv) “Scope of Work Completion Date”: Date that a contractor or Self-Installer completes installation of its Scope of Work.
- (ww) “Self-Installer”: An Eligible Affordable Multifamily Financing Customer who installs any measures pursuant to the requirements in Section 10093.5(c).
- (xx) “Total Charge-Off Amount”:
- (1) For Eligible Leases or Eligible Equipment Financing Agreements and for Eligible Loans: The Total Charge-Off Amount equals the outstanding principal balance at the time of charge-off.
 - (2) For Eligible Service Agreements and Eligible Savings-Based Payment Agreements: The Total Charge-Off Amount equals the total initial installation amount paid to contractor(s) divided by the number of months in the term multiplied by the number of months remaining in the term. Ongoing monthly service charges are excluded from the Total Charge-Off Amount.
- (yy) “Total Financed Amount”: The total amount funded by the Finance Provider Entity toward the Project. The Total Financed Amount does not include charges for ongoing service and/or maintenance and does not include any interest payments or ongoing finance charges.
- (1) For Eligible Leases or Eligible Equipment Financing Agreements and Eligible Loans: The original principal amount as disclosed to the Eligible Affordable Multifamily Financing Customer through loan or lease documentation or the job addendum.
 - (2) For Eligible Service Agreements and Eligible Savings-Based Payment Agreements: The total installation amount paid to the installing contractor and/or disclosed on the job addendum, inclusive of equipment, taxes, labor, and shipping costs and exclusive of ongoing service and oversight payments by Eligible Affordable Multifamily Financing Customer.
- (zz) “Trustee”: The financial institution chosen by the Authority to hold or administer some or all of the Program Holding Accounts and Loss Reserve Accounts.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.2 Finance Entity Enrollment

(a) Descriptions of Finance Provider Applicant and Entity Program Roles

- (1) The “Primary Finance Provider Applicant” is the financing company that is applying to the Program for enrollment as a Finance Provider Entity and includes any business organization that is managed, owned, or controlled by the applicant which will perform one or more of the Program roles. The Primary Finance Provider Applicant may fulfill all of the Program roles (described in Section 10093.2(b)(1) – (7)) themselves, or the entity may invite an Affiliate Finance Provider Applicant (as described in Section 10093.2(a)(2)) to apply to fulfill some of the roles. Additionally, the Primary Finance Provider Applicant may invite a Marketing Representative to fulfill the Marketing Representative role described in Section 10093.2(b)(7). If there are two or more entities fulfilling Program roles together, it will be the finance entity that plans to fulfill the "Financing Submittal role" that will be the Primary Finance Provider Applicant. The Primary Finance Provider Applicant must meet requirements described in Section 10093.2(c) and must be a signatory to the Program application.
- (2) The “Affiliate Finance Provider Applicant” is a potential co-applicant along with the Primary Finance Provider Applicant. It may fulfill one or more of the roles of the Program described in Section 10093.2(b)(1) – (7). The Affiliate Finance Provider Applicant must meet the requirements described in Section 10093.2(c) and must be a signatory to the Program application.
- (3) “Finance Provider Applicant” means the Primary Finance Provider Applicant and the Affiliate Finance Provider Applicant collectively.
- (4) “Primary Finance Provider Entity” means a Primary Finance Provider Applicant who has been accepted for enrollment in the Program. The Primary Finance Provider Entity must fulfill all the Program roles described in Section 10093.2(b)(1) – (7) themselves, or this entity may fulfill Program roles along with an Affiliate Finance Provider Entity and, potentially, an additional entity serving as Marketing Representative. If there are two entities fulfilling Program roles together, it will be the finance entity that fulfills the Financing Submittal role that will be determined to be the Primary Finance Provider Entity.
- (5) “Affiliate Finance Provider Entity” means an Affiliate Finance Provider Applicant that has been accepted for enrollment in the Program to fulfill Program roles along with the Primary Finance Provider Entity.
- (6) “Finance Provider Entity (FPE)” means the Primary Finance Provider Entity and the Affiliate Finance Provider Entity collectively.

(b) Finance Provider Entity Roles Within the Program

- (1) “Underwriting”
 - (A) Means following Program regulations for approving projects and financing for customers pursuant to Section 10093.4(b) and Section 10093.5 as well as following the credit and underwriting guidelines submitted by the Finance Provider Applicant pursuant to Section 10093.2(c)(3) that were approved by the Authority as part of the application process.
 - (B) The Underwriting role must be performed by either the Primary Finance Provider Entity or the Affiliate Finance Provider Entity.
- (2) “Origination”
 - (A) Means engaging in loan origination, including executing the legal contract for repayment of the Enrolled Financing Agreement with the Eligible Affordable Multifamily Financing Customer, getting Program forms signed and certified by the Eligible Affordable Multifamily Financing Customer, following Program regulations related to eligible

products as well as adhering to product terms approved by the Authority as part of the application process.

- (B) The Origination role must be performed by either the Primary Finance Provider Entity or Affiliate Finance Provider Entity.
 - (3) “Financing Submittal”
 - (A) Means providing data, documentation, and certifications related to the Project, the Eligible Financing Agreement and the Eligible Affordable Multifamily Financing Customer and submitting these data, documentation, and certifications to the Authority for enrollment in the Program.
 - (B) The specific documentation and data points required at Financing Submittal are described in Section 10093.6(b)(1)-(2).
 - (4) “Servicing”
 - (A) Means conducting a customer service operation to on-board all Eligible Financing Agreements into the servicer's servicing system, handling customer inquiries regarding Eligible Financing Agreements already under servicing, sending out regular financing billing statements, collecting and applying payments, handling requests for modifications, collections where necessary, and distributions to investors where applicable.
 - (B) The Servicing role must be performed by either the Primary Finance Provider Entity or the Affiliate Finance Provider Entity.
 - (5) “Monthly Reporting”
 - (A) Means supplying the Authority with a regular report of required data related to financing applications, performance, and sale of financings as described in Section 10093.10.
 - (B) The Monthly Reporting role must be performed by either the Primary Finance Provider Entity or Affiliate Finance Provider Entity.
 - (6) “Loss Reserve Account Representative”
 - (A) Means the Finance Provider Entity for whom the Trustee Account(s) will be opened, and the sole entity that can file a claim in the event of a charge-off.
 - (B) The Loss Reserve Account Representative role must be performed by either the Primary Finance Provider Entity or the Affiliate Finance Provider Entity.
 - (7) “Marketing Representative”
 - (A) Means the entity that is publicly listed on Program websites and marketing materials as a result of participation in the Program.
 - (B) The Marketing Representative role must be performed by either the Primary Finance Provider Entity or the Affiliate Finance Provider Entity, or by an additional entity.
 - (C) The Marketing Representative must sign the acknowledgements and certifications in Section 10093.2(c)(4), (5), and (7).
- (c) Application to Participate in the Program

A Primary Finance Provider Applicant seeking to become a Finance Provider Entity must submit a complete enrollment application to the Authority signed by a person authorized to legally bind the Primary Finance Provider Applicant and shall include the signatory's name, title, and date. Where the Primary Finance Provider Applicant wishes to apply along with an Affiliate Finance Provider Applicant, the Affiliate Finance Provider Applicant must also submit an application signed by a person authorized to legally bind the Affiliate Finance Provider Applicant and provide their name, title, and date. Both the Primary Finance Provider Applicant and the Affiliate Finance Provider Applicant must sign the acknowledgements, certifications, and representations of the Finance Provider Applicant, below.

All applications must include a certification that all of the information provided is true and correct to the best of the signatory's knowledge.

A complete enrollment application includes the following information, disclosures, acknowledgements, certifications, and representations in a format to be specified by the Authority:

(1) Information

(A) For the Primary Finance Provider Entity:

- (i) Name, address, and website URL of the Primary Finance Provider Entity.
- (ii) Name, title, phone number, and e-mail address of the Program contact person for the Primary Finance Provider Entity.
- (iii) The name(s) and e-mail address(es) of individual(s) who are authorized to provide and certify data and submit Eligible Financing Agreements for enrollment in the Program on behalf of the Primary Finance Provider Entity.
- (iv) Type of finance entity, e.g., insured depository institution, insured credit union, Community Development Financial Institution, or California Finance Lender, or other type.
- (v) Name(s) of any regulatory agency(ies) and any insuring agency(ies) to which the Finance Provider Entity is accountable and license number(s), if applicable.

(B) For the Affiliate Finance Provider Entity, if applicable:

- (i) Name, address, and website URL of the Affiliate Finance Provider Entity.
- (ii) Name, title, phone number, and e-mail address of the Program contact person for the Affiliate Finance Provider Entity.
- (iii) Type of finance entity, e.g., insured depository institution, insured credit union, Community Development Financial Institution, or California Finance Lender, or other type.
- (iv) Name(s) of any regulatory agency(ies) and any insuring agency(ies) to which the Finance Provider Entity is accountable and license number(s), if applicable.

(C) For the Marketing Representative, if different than the Finance Provider Entity:

- (i) Name, address, and website URL of the Marketing Representative.
- (ii) Name, title, phone number, and e-mail address of the Program contact person.

(2) Disclosures

The Finance Provider Applicant must disclose the following:

- (A) If there are to be separate entities applying to be the Primary Finance Provider Entity and Affiliate Finance Provider Entity, which of the two entities will perform the Underwriting, Origination, Servicing, Monthly Reporting, and Loss Account Representative roles;
- (B) The name of the entity that will be the Marketing Representative;
- (C) The name of the entity funding the Projects that are to be enrolled in the Program;
- (D) The name of the finance agreement counterparty(ies) or the service agreement counterparty(ies) who will be named on the closing documentation provided to the Eligible Affordable Multifamily Financing Customer;
- (E) The assignee(s) of repayment streams, if any; and

- (F) The Finance Provider Applicant’s intent as to what it will do with the Enrolled Financing Agreements, if known, (e.g. hold, sell, transfer, participate, etc.) and the identity of a purchaser, if applicable.

(3) Proposed Products

To participate in the Program, the Finance Provider Applicant must provide a description of proposed financial product(s), including:

- (A) A detailed description of the product(s) the Finance Provider Applicant is proposing to offer, including, but not limited to, the type of financing product and its relationship to the categories of Eligible Financing Agreements, collateral requirements (if any), minimum and maximum financed amounts, interest rates (including whether they are fixed or variable), terms, service or maintenance charges, fees, prepayment penalties, and a description of customer eligibility and underwriting criteria. These product offerings must be certified by at least one of the Finance Provider Applicants.
- (B) A description of the geographic area(s) in California where the financing program(s) will be available.
- (C) An explanation of how the Loss Reserve Contribution will be utilized to provide benefits to Eligible Affordable Multifamily Financing Customers compared to the Finance Provider Applicant’s typical product offerings in one or more of the following ways:
 - (i) Broadened approval criteria;
 - (ii) Longer terms;
 - (iii) Larger amounts available to finance;
 - (iv) Better rates; and/or
 - (v) Other advantageous terms.

(4) Acknowledgements of the Finance Provider Applicant and the Marketing Representative

The application must include the Finance Provider Applicant’s acknowledgements contained within this Section, signed by a person authorized to legally bind the Finance Provider Applicant. If the Finance Provider Applicant will not be filling the Marketing Representative role, the application must additionally include the Marketing Representative’s acknowledgements below, signed by a person authorized to legally bind the Marketing Representative.

- (A) The Authority has made no representations, promises, or guarantees pertaining to the volume, quantity, or quality of financing agreements issued under the Program.
- (B) It, its representatives, and agents are not hired by the Authority or any of the participating IOUs, and must not represent themselves as such, or claim association or affiliation with the Authority or any of the participating IOUs in any capacity.

(5) Certifications of the Finance Provider Applicant and Marketing Representative

The application must include the Finance Provider Applicant’s certifications of this Section, signed by a person authorized to legally bind the Finance Provider Applicant. If the Finance Provider Applicant will not be filling the Marketing Representative Role, the application must

additionally include the Marketing Representative’s certifications of this Section, except for subsection (D), signed by a person authorized to legally bind the Marketing Representative.

- (A) It is not subject to a cease and desist order or other regulatory sanction from the appropriate federal or state regulatory body, which would impair its ability to participate in the Program.
- (B) The person signing the application is authorized to legally bind the Finance Provider Applicant, and must include the signatory’s printed name, title, and date.
- (C) All Finance Provider Applicants that are not Financial Institutions must comply with the additional requirements specified in Section 10093.3.

The Finance Provider Applicant certifies that, once it is enrolled in the Program as a Finance Provider Entity:

- (D) The regulations within this Article constitute a lender services agreement between the Finance Provider Entity and the Authority.
 - (E) It must follow the Program regulations as provided herein.
 - (F) It must permit an audit by the Authority of any of its records relating to Enrolled Financing Agreements during normal business hours on its premises, and must supply such other information concerning Enrolled Financing Agreements as may be requested by the Authority. Additionally, the Finance Provider Entity must permit an audit of its records relating to how it is representing the Program to the public, including, but not limited to, web and print collateral, marketing scripts, and marketing materials.
 - (G) The Authority and the State of California have no liability to the Finance Provider Entity under the Program except from funds deposited in the Loss Reserve Account(s) for the Finance Provider Entity.
- (6) In addition to the certifications listed in Section 10093.2(c)(5), the application must include the following certifications of the Primary Finance Provider Applicant. These certifications must be signed by a person authorized to legally bind the Finance Provider Applicant, that upon enrollment in the Program as Finance Provider Entity and for all forthcoming Eligible Finance Agreements submitted for enrollment in the Program, the Finance Provider Applicant agrees that:
- (A) It will provide the documentation required in Section 10093.6(b)(1), the data required in Section 10093.6(b)(2), and will secure the certifications of the Eligible Affordable Multifamily Financing Customer as described in Section 10093.6(b)(3);
 - (B) The Eligible Affordable Multifamily Financing Customer will be provided with a Bill Impact Estimate;
 - (C) The Eligible Financing Agreement will comply with all Program regulations;
 - (D) The Claim-Eligible Financed Amount will not include any costs for Distributed Generation;
 - (E) It will submit copies of approved permits by the relevant permitting agency required to complete each Scope of Work;
 - (F) If the entirety of the Claim-Eligible Financed Amount has not yet been funded at the time of submittal, that it will be funded within 30 calendar days of submittal; and

- (G) If after submittal, the Primary Finance Provider Entity determines it will not fund the entirety of the Claim-Eligible Financed Amount, that it will notify the Authority within 10 business days of this determination.

(7) Representations of the Finance Provider Applicant and Marketing Representative

The application must include the Finance Provider Applicant’s representation, warranty, and covenant contained in this Section, signed by a person authorized to legally bind the Finance Provider Applicant. If the Finance Provider Applicant will not be filling the Marketing Representative role, the application must additionally include the Marketing Representative’s representation, warranty, and covenant below, signed by a person authorized to legally bind the Marketing Representative.

Upon enrollment in the Program as a Finance Provider Entity:

- (A) It must retain all records relating to each Enrolled Financing Agreement for the term of financing.
- (B) It is solely responsible for identifying and making all disclosures and providing periodic reports to its Eligible Affordable Multifamily Financing Customer(s) as required under applicable finance laws.
- (C) It must comply with all applicable finance laws, possess and maintain all required state and federal licenses, and remain in good standing with all governmental authorities having jurisdiction over its business.
- (D) It indemnifies, defends, and holds harmless the Authority, each of the IOUs, their affiliates, and each of its respective officers, directors, employees, agents, and representatives (each of which is an express beneficiary of this indemnity) from and against any and all losses arising in connection with any claim:
 - (i) Resulting from the negligent or unlawful acts or omissions, or willful or tortious conduct including, but not limited to, any failure of the Finance Provider Entity, or its agents, to comply with applicable finance laws in connection with Enrolled Financing Agreements;
 - (ii) Resulting from any error or omission by the Finance Provider Entity or any of its agents in the calculation or presentation of principal repayments or interest with respect to an Enrolled Financing Agreement, fees and charges, the receipt and processing of payments received from Eligible Affordable Multifamily Financing Customers or any collection or enforcement action;
 - (iii) Alleging any breach of a representation, warranty, or covenant by such Finance Provider Entity;
 - (iv) Alleging any misrepresentation by the Finance Provider Entity or its agents with respect to the energy savings to be achieved in connection with an Enrolled Financing Agreement, or any failure or deficiency in the products, materials, or work supplied to a Eligible Affordable Multifamily Financing Customer in connection with an Enrolled Financing Agreement; and/or
 - (v) Arising from the Finance Provider Entity’s breach or alleged breach of the regulations within this Article and/or its confidentiality or privacy obligations under the regulations within this Article or with respect to the Program.

- (E) The Finance Provider Entity agrees that the IOUs are not responsible for, and will have no liability for:
 - (i) The energy efficiency improvements funded through the Enrolled Financing Agreement(s) supported through the Loss Reserve Account(s);
 - (ii) The assessment of potential benefits and costs associated with those improvements;
 - (iii) The qualification of the Finance Provider Entity;
 - (iv) The Finance Provider Entity’s marketing and/or lending policies and practices; or
 - (v) The Authority’s educational and outreach activities.

(d) Application Process

- (1) Upon receipt of a completed application, the Authority will, within fifteen business days, review and determine whether additional information is required, or whether the application is sufficient to permit the Finance Provider Applicant to be a Finance Provider Entity.
- (2) The Authority’s decision regarding enrollment will be final.
- (3) The Authority will notify the Finance Provider Applicant of its decision and provide a Program-assigned identifier if enrolled as a Finance Provider Entity.

(e) Changes to Product Terms

- (1) If, after being approved to participate in the Program, a Finance Provider Entity wishes to make changes to products offered that will affect the benefits to Eligible Affordable Multifamily Financing Customers (as described in Section 10093.2(c)(3) and Section 10093.4), the changes must be approved by the Authority.

(f) Finance Provider Entity Withdrawal and Termination

- (1) A Finance Provider Entity may withdraw from the Program after giving written notice, signed by a person authorized to legally bind the Finance Provider Entity to the Authority. Such notice must specify either:
 - (A) That the Finance Provider Entity waives any further interest in the Loss Reserve Account(s) and the reason for the Finance Provider Entity’s withdrawal from the Program (including that all Enrolled Financing Agreements covered by the Loss Reserve Account(s) have been repaid or sold to a different Finance Provider Entity’s portfolio); or,
 - (B) That the Finance Provider Entity will not enroll any further Eligible Financing Agreements under the Program but that the Loss Reserve Account(s) will continue in existence to secure all Enrolled Financing Agreements that were enrolled prior to such notice, and the reason for the Finance Provider Entity’s withdrawal from the Program.
- (2) For any such notice received pursuant to Section 10093.2(f)(1)(A), the remaining balance in the Finance Provider Entity’s Loss Reserve Account(s) will be distributed to the appropriate Program Holding Account(s).
- (3) The Executive Director may terminate participation of a Finance Provider Entity in the Program, by notice in writing, upon the occurrence of any of the following:
 - (A) Entry of a cease and desist order, regulatory sanction, or any other action against the Finance Provider Entity by a regulatory agency or court with jurisdiction over the Finance Provider Entity;

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- (B) Failure of the Finance Provider Entity to abide by applicable finance law or the regulations within this Article;
 - (C) Failure of the Finance Provider Entity to service or enroll any Eligible Financing Agreements under the Program, as applicable, for a period of one year;
 - (D) Failure of the Finance Provider Entity to report to the Authority pursuant to Section 10093.10 for sixty calendar days; or
 - (E) Providing false or misleading information regarding the Finance Provider Entity, or an Enrolled Financing Agreement, to the Authority, or failure to provide the Authority with notice of material changes in submitted information regarding the Finance Provider Entity.
- (4) In the event of such termination, the Finance Provider Entity must not enroll any further Eligible Financing Agreements, but all previously Enrolled Financing Agreements will continue to be covered by the Loss Reserve Account(s) until the entity is paid, claims are filed, or the Finance Provider Entity withdraws from the Program pursuant to Section 10093.2(f)(1)(A).
- (5) A terminated Finance Provider Entity must continue to report on Enrolled Financing Agreements pursuant to Section 10093.10.
- (6) If a terminated Finance Provider Entity fails to report to the Authority pursuant to Section 10093.10 for sixty calendar days, the remaining balance in the Finance Provider Entity's Loss Reserve Account(s) may be distributed to the appropriate Program Holding Account(s).

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.3 Additional Requirements for Entities that are not Financial Institutions

In addition to the requirements set forth in Section 10093.2(c), to be approved as a Finance Provider Entity, Finance Provider Applicants who are not Financial Institutions as defined in the regulations in this Article must meet the requirements described in this Section in a format to be specified by the Authority. All representations, warranties, and covenants in this Section must be signed by a person authorized to legally bind the Finance Provider Applicant, and must be true and correct to the best of the signatory's knowledge.

- (a) Net Worth: The Finance Provider Applicant must demonstrate to the Authority that it has a net worth of no less than \$1 million.
- (b) Quality Control: The Finance Provider Applicant must demonstrate to the Authority that it maintains quality control and management systems to evaluate and monitor the overall quality of its financing-related activities, including, where applicable, underwriting reviews, and consumer complaint resolution processes.
- (c) Underwriting Qualifications: If the Finance Provider Applicant will perform the Underwriting role for the Program, it must provide the following to the Authority:
 - (1) Demonstrated experience, in writing, with underwriting commercial financing;
 - (2) Demonstrated experience, in writing, with equipment financing and the coordination of such financing with contractors and customers;
 - (3) Written description of its underwriting process; and
 - (4) Demonstrated qualifications, in writing, of the Finance Provider Applicant and key positions and associated job duties with regard to underwriting.
- (d) Origination Qualifications: If the Finance Provider Applicant will perform the Origination role for the Program, it must provide the following to the Authority:
 - (1) Proof of at least \$20 million in committed capital for general financing activities or demonstrate in writing that it has originated at least \$20 million in financing agreements similar to Eligible Financing Agreements or 20 transactions in financing agreements similar to Eligible Financing Agreement
 - (2) Demonstrated ability, in writing, to originate commercial financing in accordance with all applicable finance laws, including related expertise and experience, trained and qualified personnel, and suitable systems, processes, and facilities to support the business;
 - (3) Demonstrated experience, in writing, with equipment financing and the coordination of such financing with contractors and customers; and
 - (4) Sample transaction documentation.
- (e) Servicing Qualifications: If the Finance Provider Applicant will perform the Servicer role under the Program, it must provide the following to the Authority:
 - (1) Demonstrated capacity, in writing, for, and experience with, servicing the type of product(s) the Finance Provider Applicant will be providing and general customer service; and
 - (2) A description of key positions and associated job duties, software, and systems used by the Finance Provider Applicant in performing servicing of Enrolled Financing Agreements.

(f) Insurance: The Finance Provider Applicant must maintain and provide evidence of the following insurance coverage:

- (1) General liability with limits of not less than \$1 million per occurrence for bodily injury and property damage liability combined. The policy must include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance must apply separately to each insured against whom a claim is made or suit is brought subject to the Finance Provider Applicant's limit of liability. The policy must include the State of California, its officers, agents, employees, and servants as additional insureds, but only insofar as the operations under the regulations within this Article are concerned.
- (2) Companies that utilize vehicles for business purposes shall maintain motor vehicle liability with limits of not less than \$1 million per accident. Such insurance must cover liability arising out of owned, hired, and non-owned motor vehicles.
- (3) Statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the Program, including special coverage extensions where applicable. Employer's liability limits of \$1 million are required.
- (4) All insurance coverage must be in effect for the complete term during which the Finance Provider Applicant is enrolled as a Finance Provider Entity. If insurance expires during this term, a new certificate must be received by the Authority at least ten business days prior to the expiration of the insurance. The new insurance must meet the terms required in this Section.
- (5) The Finance Provider Entity is responsible for ensuring that coverage will not be cancelled without thirty days' prior written notice to the Authority.
- (6) The Finance Provider Entity is responsible for any deductible or self-insured retention contained within the insurance program.
- (7) Once enrolled, the Finance Provider Entity has the obligation to keep in effect at all times the insurance coverage specified in the regulations within this Article. If this obligation is not met, the Authority may, in addition to any other remedies it may have, terminate the Finance Provider Entity's participation in the Program, subject to the provisions set forth in the regulations in this Article.
- (8) Any insurance meeting the requirements of the regulations within this Article must be primary, and not excess, to any other insurance carried by the Authority.

(g) Representations of Finance Provider Applicants and Marketing Representatives

The application must include the Finance Provider Applicant's representation, warranty, and covenant contained in this Section, signed by a person authorized to legally bind the Finance Provider Applicant. If the Finance Provider Applicant will not be filling the Marketing Representative role, the application must additionally include the Marketing Representative's representation, warranty, and covenant below.

These representations, warranties, and covenants are not limited to matters of which the Finance Provider Applicant and/or Marketing Representative had knowledge. Matters that are of public record will be deemed to be known by the Finance Provider Applicant and Marketing Representative.

- (1) The Finance Provider Applicant is duly organized and validly existing under the laws of the state of its organization and California with due power and authority to own its properties and to conduct its business as such properties are currently owned and such business is presently

- conducted, and has had at all relevant times and continues to have the power, authority, and legal right to participate in this Program.
- (2) The Finance Provider Applicant is duly qualified to do business and has obtained all necessary licenses and approvals in all jurisdictions in which the ownership or lease of property or the conduct of its business will require such qualifications.
 - (3) The Finance Provider Applicant has the power and authority to execute and to carry out the terms of the Program.
 - (4) There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency nor other governmental instrumentality having jurisdiction over the Finance Provider Applicant or its properties:
 - (A) Asserting the invalidity of the regulations within this Article;
 - (B) Seeking to prevent the consummation of any of the transactions contemplated by the regulations within this Article; or
 - (C) Seeking any determination or ruling that might materially and/or adversely affect the performance by the Finance Provider Applicant of its obligations under the regulations within this Article.
- (h) The Finance Provider Applicant must make the following representations, warranties, and covenants to the Authority, signed by a person authorized to legally bind the Finance Provider Applicant. These representations, warranties, and covenants are not limited to matters of which the Finance Provider Applicant had knowledge. Matters that are of public record will be deemed to be known by the Finance Provider Applicant.
- (1) The Finance Provider Applicant has, and must maintain throughout its enrollment in the Program as an FPE, trained and qualified employees and suitable facilities and operating systems for the performance of the Underwriting, Origination, and Servicing functions, as applicable, required to administer the Program.
 - (2) For a Finance Provider Applicant planning to fill the Servicing role, the Finance Provider Applicant has established, and must maintain throughout its enrollment in the Program as an FPE, a written disaster recovery plan that covers the restoration of the facilities, backup, and recovery of information in electronic data processing systems. Alternate processing facilities and systems are required to ensure continuous operations. The Finance Provider Entity must allow the Authority, at no additional cost to the Authority, to inspect its disaster recovery plan and facilities.
 - (3) For a Finance Provider Applicant planning to fill the Originator role, the Finance Provider Applicant has established, and must maintain throughout its enrollment in the Program as an FPE, adequate internal audit and management control systems to guard against dishonest, fraudulent, or negligent acts by employees and contractors involved in the origination process.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.4 Eligible Financial Products

(a) Disclosure

For all financial products, the Finance Provider Entity must disclose to the Eligible Affordable Multifamily Financing Customer either:

- (1) An annual percentage rate (APR) (inclusive of any fees) as well as any advance payments which the Eligible Affordable Multifamily Financing Customer is required to pay; or
- (2) The total cost of the Project for the Eligible Affordable Multifamily Financing Customer comprised of monthly payments multiplied by the number of months in the agreement plus any fees [(monthly payments * number of months in the agreement) + fees]. Monthly payments should be inclusive of, but not limited to, equipment and installation repayment, and any charges for financing, services, maintenance, or oversight of equipment.

For the purposes of this Section, Savings-Based Payment Agreements will satisfy the requirements set forth in the preceding paragraph with the FPE's provision of a good-faith estimate of the total cost of the project, based on industry-accepted methods and assumptions used to estimate energy savings, due to the fact that monthly payments will be variable under these agreements.

(b) Other Provisions

In addition to meeting the specific definitions of either an Eligible Lease or Eligible Equipment Financing Agreement, Eligible Loan, Eligible Service Agreement, or Eligible Savings-Based Payment Agreement, the following provisions apply to Eligible Financing Agreements:

- (1) Interest rates, if applicable, may be fixed or variable.
- (2) Refinancing agreements are acceptable only if both the original and refinancing agreements are for the same Project and the Eligible Financing Agreement is submitted for enrollment in the Program within 180 days of the Scope of Work Completion Date pursuant to Section 10093.6(a)(2).
- (3) The agreement must not be a revolving line of credit.
- (4) Fees must be reasonable and in accordance with industry standards.
- (5) The security interest must not be real property except for a UCC-1 fixture filing.
- (6) The Claim-Eligible Financed Amount of the Enrolled Financing Agreement must not be enrolled in a substantially similar program.
- (7) In addition to the general requirements stated above, terms and characteristics of the Eligible Financing Agreement must be consistent with the product(s) described by the FPE in its application to participate in the Program pursuant to Section 10093.2(c)(3) and approved by the Authority.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.5 Project Eligibility

(a) General eligibility

Any Project receiving financing through the terms of the Program must comply with the following eligibility requirements:

- (1) The Eligible Affordable Multifamily Financing Customer must be provided with a Bill Impact Estimate (BIE).
- (2) The Project must have at least one ESM meeting the requirements described in Section 10093.5(b).
- (3) All Project components must be installed by contractors with an active CSLB license that is relevant to the work performed unless the components meet the requirements for self-installation as described in Section 10093.5(c).
- (4) The Project must comply with all applicable local, state, and federal laws, rules, regulations, and ordinances, including, but not limited to, Title 24 of the California Code of Regulations.
- (5) All permits required to complete each Scope of Work must be approved by the relevant permitting agency.

(b) Measure Eligibility

There are two methods by which a measure may qualify as an Energy Saving Measure for Program purposes. Each measure must satisfy either method.

- (1) ESM List Method - The measure to be installed at the Eligible Property meets the criteria the Authority has specified on the ESM List.
 - (A) For each installed ESM, the installing contractor name(s) and active CSLB license number(s) must be provided to the Authority.
- (2) Program Partner Method – The measure to be installed at the Eligible Property has been determined to meet the definition of an ESM by a Program Partner.

(c) Self-Installers

- (1) An Eligible Affordable Multifamily Financing Customer may install, or have installed, without a licensed contractor:
 - (A) Energy Saving Measures which have been identified on the ESM List as eligible for self-installation; and
 - (B) Non-ESMs.

(d) Quality Assurance/Quality Control

- (1) For both measure eligibility methods, in order to verify that Scopes of Work were installed in accordance with the regulations within this Article, within one year of the Enrollment Date of an Eligible Financing Agreement, the Authority may conduct either:
 - (A) A review of data and documentation (desktop review);
 - (B) A field verification at the Eligible Property(ies); or
 - (C) Photo verification.

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- (2) The Authority shall notify the Eligible Affordable Multifamily Financing Customer at least ten business days prior to conducting a field verification.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.6 Financing Submittal and Enrollment

(a) Timing of Submittal and Enrollment

- (1) Once all permits required to complete each Scope of Work have been approved by the relevant permitting agency, all Scopes of Work are completed, and the Finance Provider Entity has closed the agreement with the Eligible Affordable Multifamily Customer, a complete financing submittal may be submitted for enrollment as described in Section 10093.6(b), to the Authority.
- (2) The Eligible Financing Agreement must be submitted within 180 calendar days of the last Scope of Work Completion Date on the Project.
- (3) Within 10 business days of receipt of a complete set of data elements, documentation, and certifications as described in Section 10093.6(b), for an Eligible Financing Agreement, the Authority will enroll or deny the Eligible Financing Agreement in the Program and communicate this information to the Finance Provider Entity.

(b) Complete Financing Submittal Requirements

(1) Documentation

A complete financing submittal must include the following documentation provided to the Authority by the Eligible Affordable Multifamily Financing Customer and/or Finance Provider Entity:

- (A) IOU service confirmation: The utility bills provided by any of the Investor Owned Utilities at the Eligible Property(ies) for any gas or electric service.
- (B) Eligible Affordable Multifamily Financing Customer data authorization: A signed CHEEF Privacy Rights Disclosure Form as described in Section 10093.11.
- (C) Invoice(s): Copy of the final invoice(s) which has/have been or will be supplied to the Eligible Multifamily Financing Customer for the Scopes of Work and any Distributed Generation, if applicable.
- (D) Permits: Copies of all permits that were required to complete each Scope of Work. Permits must be approved by the relevant permitting agency.
- (E) Copy of the recorded affordability deed restriction or covenant showing income restriction and family size.
- (F) If an ESM qualifies through the Program Partner Method, a copy of the Partner Program reservation letter and energy audit.

(2) Data

A completed submittal includes the following data provided to the Authority in a format approved by the Authority:

- (A) Data provided by the Eligible Affordable Multifamily Financing Customer and/or the Finance Provider Entity:
 - (i) The following data related to the Project:
 - a. The Scope of Work Completion Date for any work performed on the Project.
 - b. If the Project qualifies through the ESM List Method, the name(s) and CSLB number(s) of the contractor company(ies) who performed the installation(s).
 - c. Whether the installation of any measure resulted in a fuel switch.
 - d. Whether permits were needed for any measure in each Scope of Work.

- e. The total cost of all ESMs, Non-ESMs, and DG measures, if not indicated on the customer invoice(s)
 - (ii) The following data related to the Eligible Affordable Multifamily Financing Customer:
 - a. Name or the business entity name,
 - b. Name, e-mail address, and phone number of the Program contact,
 - c. Number of years in operation, and
 - d. An indication of how the entity is organized, e.g., sole proprietorship, corporation, or LLC.
 - (iii) The following data related to each Eligible Property:
 - a. Street address, city, and ZIP code.
 - b. Total number of units, number of units reserved for income restricted tenants, family size, and the income category as set forth in Section 6932 of Title 25 of **the California Code of Regulations**, corresponding to each unit.
 - c. Number of years remaining on the recorded affordability deed restriction or covenant.
 - d. Number of units and/or common spaces in which ESMs were installed.
 - e. The unit number of each unit in which ESMs were installed.
 - (iv) The following data related to Projects for which the Eligible Affordable Multifamily Financing Customer is seeking an IOU/REN/CCA rebate or incentive:
 - a. The rebate or incentive amount.
- (B) Data provided solely by the Finance Provider Entity:
- (i) The following data related to the Project:
 - a. The amount of any Capitalized Interest included in the Total Financed Amount.
 - (ii) The following data related to all Eligible Financing Agreements:
 - a. The Finance Provider Entity's internal financing agreement number.
 - b. An indication as to whether the financing agreement is an Eligible Loan, Eligible Lease or Eligible Equipment Finance Agreement, Eligible Energy Service Agreement, or an Eligible Savings-Based Payment Agreement.
 - c. The name of the representative of the Finance Provider Entity who submitted the agreement to the Authority.
 - d. The Total Financed Amount.
 - e. Origination date.
 - f. Whether an advanced payment was required of the Eligible Affordable Multifamily Financing Customer, and if so, the number of months covered by the payment.
 - g. Whether a security interest was taken against the financing agreement, and if so, an indication of the type of security interest taken.
 - h. Date the financing agreement funded, or is anticipated to fund.
 - i. Term of the financing agreement and its maturity date or its contractual end date.
 - j. Monthly finance agreement payment amount including principal, interest if applicable, and any maintenance, oversight, and service charges.
 - (iii) The following data relating to Eligible Loans and Eligible Leases or Eligible Equipment Financing Agreements:
 - a. Interest rate applied to the financing agreement and whether the rate is fixed or variable.

- b. Any additional fees charged to the Eligible Affordable Multifamily Financing Customer.
 - (iv) The following data related only to Service Agreements and Savings-Based Payment Agreements:
 - a. Monthly charges for ongoing service and maintenance related to the upkeep or performance of all installed measures.
- (3) Certifications

A completed financing submittal includes the following certifications provided to the Authority:

(A) Finance Provider Entity Certifications

Certification from the Primary Finance Provider Entity of the following:

- (v) All data provided by the Primary Finance Provider Entity is true and correct to the best of its knowledge.

(B) Eligible Affordable Multifamily Financing Customer Certification

Certification, signed by a person authorized to legally bind the Eligible Affordable Multifamily Financing Customer of the following:

- (i) All Scopes of Work have been installed and completed to its satisfaction;
- (ii) Contractor(s) who completed the Scope(s) of Work holds the relevant license(s) to perform the installation(s);
- (iii) It understands that the Authority and its directors, officers, and agents, and the IOUs and its directors, officers and agents, do not guarantee the performance, quality, or workmanship of any installation in the Project;
- (iv) The Eligible Financing Agreement funds were, or will be, used to pay for the eligible Project;
- (v) All permits required to complete each Scope of Work have been approved by the relevant permitting agency;
- (vi) The Program Partner or Finance Provider Entity has provided the Eligible Affordable Multifamily Financing Customer with a Bill Impact Estimate;
- (vii) Acknowledgement and agreement to be subject to random post-project verifications, as described in Section 10093.5(d); and
- (viii) Certification that all of the information provided by the Eligible Affordable Multifamily Financing Customer is true and correct to the best of its knowledge.

(C) Self-Installer Certification, if applicable

Certification, signed by the Self-Installer, of the following:

- (i) The improvements installed are listed as eligible for self-installation on the ESM List or qualify as Non-ESM building improvements.

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Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.7 Credit Enhancement

(a) Establishment of Accounts

Upon the Authority's acceptance of an application from a Finance Provider Applicant to be a Finance Provider Entity, the Authority shall instruct the Trustee to establish a Loss Reserve Account(s) for the Finance Provider Entity. The Loss Reserve Account(s) will be held by the Trustee and will be used to:

- (1) Receive and hold Loss Reserve Contributions deposited by the Authority for the benefit of a Finance Provider Entity; and
- (2) Pay claims in accordance with Section 10093.8.

(b) At the Loss Reserve Account Representative's request, the Authority will establish up to three Loss Reserve Accounts for the Finance Provider Entity.

(c) Contributions to Loss Reserve Accounts

- (1) For each of the Finance Provider Entity's Enrolled Financing Agreements, the Authority shall direct the Trustee to transfer a Loss Reserve Contribution from the Program Holding Account to the Loss Reserve Account of that Finance Provider Entity.
- (2) 15% of the Claim-Eligible Financed Amount will be contributed for each enrolled financing agreement. However, for each FPE, the first and second Enrolled Financing Agreement will receive a contribution of 30% of the Claim-Eligible Financed Amount. In all circumstances the Claim-Eligible Financed Amount must not exceed \$200,000 per Enrolled Financing Agreement.
- (3) If the Primary Finance Provider Entity notifies the Authority pursuant to Section 10093.2(c)(6)(G) that it determined not to fund the Enrolled Financing Agreement, the Authority will recover the Loss Reserve Contribution for that Enrolled Financing Agreement by transferring the funds back to the Program Holding Account and the financing agreement will be removed from the Program.
- (4) If the Primary Finance Provider Entity notifies the Authority pursuant to Section 10093.2(c)(6)(G) that it determined to fund less than the Claim-Eligible Financing Amount as reported at the time of submittal, the Authority will recover any excess contribution to the Loss Reserve Account by transferring the funds back to the Program Holding Account.

(d) Annual Rebalance

Once per fiscal year ending June 30, the Authority shall instruct the Trustee to rebalance a Finance Provider Entity's Loss Reserve Account, if necessary, and move funds from the FPE's Loss Reserve Account into the Program Holding Account.

(e) Methodology

The initial rebalance amount will be the sum of the original Loss Reserve Contributions associated with Enrolled Financing Agreements that were paid off in full during the fiscal year.

- (1) If the FPE did not make any claims as provided under Section 10093.8 during the fiscal year, the initial rebalance amount will not be changed and the funds will be transferred from the FPE's Loss Reserve Account to the Program Holding Account.

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- (2) If the FPE made one or more claims as provided under Section 10093.8 during the fiscal year, and the total claim amount is less than the initial rebalance amount, the final rebalance amount will equal the initial rebalance amount less the claim(s) amount.
- (3) If the FPE made one or more claims as provided under Section 10093.8 during the fiscal year, and the total claim amount is more than the initial rebalance amount, there will be no rebalance.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.8 Claims

- (a) A Finance Provider Entity may submit a claim for an Enrolled Financing Agreement when all of the following conditions are met:
 - (1) The claim is submitted within 10 years from the Enrollment Date;
 - (2) The Eligible Affordable Multifamily Financing Customer has defaulted on the Enrolled Financing Agreement and the FPE has charged off some or all of the outstanding Claim-Eligible Financed Amount;
 - (3) The Finance Provider Entity has taken reasonable steps in accordance with industry standards to seek recoveries through liquidation of collateral and any personal guarantees, if applicable; and
 - (4) The Finance Provider Entity is in compliance with Program regulations including, but not limited to, the reporting requirements in Section 10093.10.

- (b) In the event of a charge-off, the Finance Provider Entity may submit a claim for up to 90% of the Claim-Eligible Charge-Off Amount.

- (c) Claims will be paid net of any recovery and proceeds that the Finance Provider Entity has obtained prior to the filing of the claim such that the Finance Provider Entity will recoup no more than 100% of the Claim-Eligible Charge-Off Amount. Unless as described in Section 10093.8(d), a payment for a particular claim is limited to the funds in the Finance Provider Entity's Loss Reserve Account(s) at the time that the claim is approved by the Authority.

- (d) If there are not sufficient funds in the Finance Provider Entity's Loss Reserve Account to cover 90% of the Claim-Eligible Charge-Off Amount at the time of a claim, the Loss Reserve Account Representative may ask that future contributions to the Loss Reserve Account (when new financings are enrolled) be paid out as part of the original claim until the end of the next annual rebalancing.

- (e) Claim Applications

Claim applications must be submitted by the Loss Reserve Account Representative to the Authority within 180 calendar days of the date of charge-off of an Enrolled Financing Agreement. To make a claim, a Finance Provider Entity must be in compliance with the Program regulations, including, but not limited to, the reporting requirements in Section 10093.10. The claim application must include the following information provided by the Finance Provider Entity in a format to be specified by the Authority:

- (1)
 - (A) Total charge-off amount and claim amount requested.
 - (B) Whether or not enforcement proceedings have commenced.
 - (C) Trustee account number(s) from which the claim payment will be made.
 - (D) The loss reserve payee.

- (2) If the Enrolled Financing Agreement is secured, a statement of whether the Finance Provider Entity has commenced enforcement proceedings;

- (3) Certification that the claim was submitted as required by Section 10093.8(a) and certification that such charge-off was made in a manner consistent with the Finance Provider Entity's usual methods for taking action on financing agreements which are not Enrolled Financing Agreements under the Program;

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- (4) Certification that the Finance Provider Entity will comply with reporting requirements on recoveries and proceeds, as set forth in Section 10093.10(b)(8);
 - (5) Certification that all of the information provided is true and correct to the best of the signatory's knowledge; and
 - (6) The claim application must be signed by the Loss Reserve Account Representative and shall include the signatory's printed name, title, and date.
- (f) The Authority will approve claims within thirty calendar days of the Authority's receipt of a completed and qualified claim request, provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that any of the acknowledgements, certifications, representations, and warranties provided by the Finance Provider Entity pursuant to Section 10093.2(c)(4) - (7) and Section 10093.3(g) and (h) at the time of application to the Program were false, or if the Eligible Financing Agreement claimed upon does not conform to financing product(s) submitted in the application to participate in the Program pursuant to Section 10093.2(c)(3) or a subsequent update pursuant to Section 10093.10(f), or if the Finance Provider Entity is not in compliance with its obligations, including reporting obligations, under the regulations within this Article. The Authority, upon providing written notice to the Finance Provider Entity, may defer approval of claims up to an additional thirty calendar days if the Authority requires more information in order to determine if the claim shall be paid. Prior to authorizing a disbursement from a Loss Reserve Account, the Authority may request documentation relating to the original Enrolled Financing Agreement, the servicing file, and the default.
- (g) Upon approval of a claim, the Authority will direct the Trustee to disburse the approved claim amount from the Finance Provider Entity's Loss Reserve Account to the Loss Reserve Representative within five business days.
- (h) The Loss Reserve Representative may request that the Trustee disburse funds to a third party of its choosing. Such request to disburse funds to a third party must be made by the Loss Reserve Representative to the Authority, in writing, at the time of the submission of the claim application.
- (i) If, subsequent to the payment of a claim to the Authority, the Finance Provider Entity recovers from the Eligible Affordable Multifamily Financing Customer, from liquidation of collateral, personal guarantees, or from any other source, amounts for which the Finance Provider Entity applied to have recouped from the Authority, the Finance Provider Entity must promptly pay to the Authority or its agent, for deposit in the Program Holding Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Finance Provider Entity's loss on the Claim-Eligible Charge-Off Amount.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.9 Sale and Transfer of Enrolled Financings and Transfer of Program Roles

- (a) A Finance Provider Entity may sell, transfer, or assign an Enrolled Financing Agreement or the associated repayments of an Enrolled Financing Agreement in whole or in part, or a portfolio of Enrolled Financing Agreements, in whole or in part. The sale must be reported to the Authority pursuant to Section 10093.11.
- (b) The Primary Finance Provider Entity and Affiliate Finance Provider Entity may transfer between themselves the roles of Monthly Reporting, Loss Reserve Account Representative, and Financing Submittal by notifying the Authority in writing. If the Financing Submittal role transfers, the entity performing the Financing Submittal role will become the new Primary Finance Provider Entity.
- (c) If the Primary Finance Provider Entity or Affiliate Finance Provider Entity wish to transfer any of the roles it has been approved to perform, and/or disclosed that it will perform, to a non-enrolled entity, the new entity must apply to the Program as a Primary Finance Provider Applicant or Affiliate Finance Provider Applicant and be approved by the Authority for enrollment in the Program. At any time, no more than one entity may serve as Primary Finance Provider Entity and at any time, no more than one entity may serve as Affiliate Finance Provider Entity for any Finance Provider Entity. Once approved, the new entity must assume all of the roles filled by the departing Finance Provider Entity.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.10 Reporting

- (a) The Finance Provider Entity must report to the Authority, on a monthly basis, the status of each Enrolled Financing Agreement as well as on financing applications and decisions for the Program. The report is due to the Authority on the 5th day of the month, except the report will be due on the 6th day of the month if a bank holiday falls in the first week of the month.
- (b) The report must include the following data points in a format approved by the Authority for Enrolled Financing Agreements:
 - (1) Whether the financing agreement is current, 30 days, 60 days, or 90 days past due, fully satisfied, or charged off.
 - (2) Any changes to the maturity date or contractual end date, payment amount, and/or interest rate.
 - (3) The current outstanding financed amount.
 - (4) Whether the financing agreement was sold, transferred, or assigned to a third party and the date of such sale, transfer, or assignment.
 - (5) If the financing agreement was sold, transferred, or assigned, the name of the purchaser, transferee, or assignee and whether the transaction was in whole or in part.
 - (6) Date(s) and amount(s) of any charge-off and whether enforcement proceedings have begun.
 - (7) Any anticipated losses and whether acceleration notices have been sent.
 - (8) Amount of any recoveries or proceeds from charged-off financings.
- (c) Once a Finance Provider Entity has reported an Enrolled Financing Agreement as having a zero balance, it does not need to continue reporting on that agreement in future reports.
- (d) For Savings-Based Payment Agreements where the payment amount fluctuates monthly, the Finance Provider Entity must report changes to the monthly payment amount annually, no later than February 6 for the January monthly report.
- (e) The report must also include the number of completed applications received and the number approved for the Program during the prior month.
- (f) No later than January 15th of each year:
 - (1) The Finance Provider Entity must provide a report to the Authority on any material changes to information or certifications provided in the initial application to participate or indicating that all statements made in the application remain materially unchanged.
 - (2) Finance Provider Entities that are not Financial Institutions must also provide written evidence of current licenses and insurance.
- (g) If a Finance Provider Entity becomes subject to a cease and desist order or other regulatory sanction from an appropriate federal or state regulatory body, the FPE must inform the Authority in writing within ten business days of such action.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code

Section 10093.11 California Hub for Energy Efficiency Financing Privacy Rights Disclosure

The Eligible Affordable Multifamily Financing Customer authorizes the IOU(s), Program Partners, and the Finance Provider Entity to share information with the Authority, as required by the regulations within this Article, including contact information, data on work performed and improvements installed on the Project, any and all IOU/REN/CCA rebate data, information regarding the Eligible Financing Agreement, and other information relating to or arising from participation in the Program.

An authorized representative of the Eligible Affordable Multifamily Financing Customer will be required to affirm that it has read and acknowledges the following privacy rights disclosure in a format to be specified by the Authority:

As a result of your participation in an energy efficiency financing program, as approved by the California Public Utilities Commission (CPUC) and administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), CAEATFA may come into possession of some or all of the following information:

- (a) Information disclosing the fact that you are a customer of the finance company.
- (b) Your financing agreement or the account number associated with your financing agreement.
- (c) Your name, address, and contact information.
- (d) Your financial status and underwriting criteria.
- (e) The amount of and terms for repayment of your financing agreement.
- (f) Information regarding your financing agreement payment history.
- (g) The equipment or improvements funded with the proceeds of your financing agreement.
- (h) Utility rebate and/or incentive data including, but not limited to, rebate or incentive amount, program project name and identifier, and approval date.
- (i) The account and service agreement number on your utility bill, monthly energy use, and utility account payment history.
- (j) Energy savings data from your project.

The information may be provided to CAEATFA by the CPUC or your utility(ies) or your finance company or a contractor acting on their behalf. The information may be combined with energy usage information provided by your utility(ies) to the CPUC, who may then provide such information to CAEATFA.

The information provided to CAEATFA may be released to the Investor-Owned Utilities (IOUs), other state agencies, and the federal government pursuant to contracts, interagency agreements, or if required by law. The information provided to CAEATFA will be released in an anonymized form, aggregated with information from other financing recipients throughout the state to make both financing and energy efficiency project performance available to the public. The information released to the public will be anonymized and aggregated to reduce (but may not eliminate) the risk of anyone viewing the data making an association between specific information and the provider of that information. Information that cannot be anonymized and aggregated will not be released to the public.

In addition to the anonymized and aggregated release of information contemplated above, CAEATFA may contact financing customers or may release individual financing customer names, addresses, and phone numbers that will enable the IOUs or the CPUC or individuals acting on their behalf to contact financing customers. The purpose of the release and contact will

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be limited to inviting financing customers to participate in surveys or to arrange visits to financing customers' homes to evaluate various aspects of the program.

The officials responsible for maintaining the information provided regarding your financing agreement are program personnel at the agency or its contractors. You have the right of access to records established from the information provided to the agency as it pertains to you.

By your affirmation to this Privacy Rights Disclosure, you represent and warrant that you are a duly authorized representative of the financing customer and that you have the authority to agree to the terms of this Privacy Rights Disclosure on behalf of the financing customer.

Authority: Section 26009, Public Resources Code
Reference: Sections 26003 and 26040, Public Resources Code